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IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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COURT OF CRIMINAL APPEALS
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The State of Texas
Appellant

v.

LEONARDO FABIO GARCIA
Appellee

On Review from 14-20-00548-CR
In which the Fourteenth District Court of Appeals
Considered Cause Number 2309523
From County Court at Law No. 8, Harris County, Texas

BRIEF FOR RESPONDENT MR. GARCIA ON DISCRETIONARY REVIEW

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STATEMENT OF THE CASE

This case is a State's appeal of a granting of a misdemeanor writ of habeas corpus.[1] Mr. Garcia filed his writ in cause number 2309523 to challenge a misdemeanor conviction.[2] Mr. Garcia's writ was based on an involuntary plea based upon ineffective assistance of counsel.[3] The trial court heard evidence and issued an order granting relief:

> ☒ **ORDERS RELIEF GRANTED. The Court further ORDERS** the judgment entered in cause number 1413575 on 5/15/2007 in the 8 District Court / County Criminal Court at Law, Harris County, Texas, vacated. Further, the Court ORDERS applicant discharged and released without delay.

[4]

The State filed a notice of appeal.[5] In the State's notice of appeal, it asserts the appeal is filed pursuant to Tex. Code Crim. Proc. art. 44.01.[6]

On appeal, the Fourteenth Court of Appeals dismissed the State's appeal for want of jurisdiction determining the State had no statutory right to appeal the trial court's order.[7]

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1 C.R. at 54-56.
2 The writ was filed pursuant to Tex. Code Crim. Proc. art. 11.09.
3 C.R. at 5-8.
4 C.R. at 48.
5 C.R. at 54.
6 C.R. at 54.
7 *State v. Garcia*, 619 S.W.3d 380, 382-85 (Tex. App. – Houston 14th Dist. 2021, pet. granted).

Statement of Procedural History

The Fourteenth Court of Appeals issued its opinion on March 2, 2021.[8] The Court of Appeals dismissed the State's appeal for want of jurisdiction.[9] The State chose not to file a motion for rehearing or motion for *en banc* reconsideration. The State timely filed a petition for discretionary review which this Court granted on April 21, 2021. The State filed its brief on May 20, 2021. Counsel for Mr. Garcia was appointed by the trial court on June 23, 2021.[10] After a motion for extension of time was granted, this brief is timely if filed on or before August 9, 2021.

State's Granted Ground for Review

> The Fourteenth Court of Appeals misconstrued Article 44.01 of the Texas Code of Criminal Procedure and erred in concluding that the State does not have the right to appeal the trial court's order granting relief in a habeas corpus proceeding brought under Article 11.09 of the Texas Code of Criminal Procedure, when the trial court's order functionally served to either grant a new trial or to dismiss the information—both of which would constitute an appealable order under Article 44.01(a).

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8 *State v. Garcia*, supra at 7.

9 *Garcia*, 619 S.W.3d at 385.

10 On June 2, 20201, this Court ordered the trial court to conduct a hearing and appoint counsel if Mr. Garcia was indigent. Additionally, this Court ordered a supplemental record to be filed. That has not yet occurred by the date of the filing of this brief.

STATEMENT OF FACTS

Detailed facts of the underlying writ of habeas corpus are unnecessary for a determination of the ground for relief granted. Mr. Garcia filed a writ of habeas corpus pursuant to Tex. Code Crim. Proc. art. 11.09 for a misdemeanor conviction alleging an involuntary plea and ineffective assistance of counsel.[11] The trial court granted relief, vacated the conviction, and discharged Mr. Garcia.[12] The only issue is whether the State has statutory authority to appeal the trial court's order granting relief, vacating the conviction, and discharging the applicant.[13]

SUMMARY OF THE ARGUMENT

The Fourteenth Court of Appeals decision to dismiss the State's appeal was correct under the law. The law does not provide for an appeal under subsection (k) of Tex. Code Crim. Proc. 44.01. Further, the State's belief that a "discharge" is the functional equivalent of a motion for new trial has no precedent to support this assertion. And finally, the State's belief that the granting of the writ is actually a motion in arrest of judgment fails again, because this is not a post-trial motion to quash an indictment and the information was not dismissed.

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11 C.R. at 5-8.

12 C.R. at 48.

13 C.R. at 48; *Garcia*, 619 S.W.3d at 382-85.

While the State's right to appeal is fairly broad, it does have limitations. The Court of Appeals decision aptly explains why the appeal was dismissed for want of jurisdiction.

ARGUMENT

The Fourteenth Court of Appeals did not misconstrue Article 44.01 of the Texas Code of Criminal Procedure and correctly dismissed the State's appeal for want of jurisdiction.

1. **The State admits that there is no explicit right to appeal under Tex. Code. Crim. Proc. 44.01**.[14]

The decision by the Court of Appeals explains that neither subsection (k) nor any explicit provision in Article 44.01 provide for an appeal form a writ under 11.09.[15] The State's argument that the addition of Subsection (k) to Article 44.01 does not diminish the State's right to appeal under Subsection (a) is correct.[16] In interpreting statutes, this Court has explained that "we presume that the

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[14] State's brief at 16.

[15] The Court of Appeals explained:
Article 44.01(k) specifically entitles the State "to appeal an order granting relief to an applicant for a writ of habeas corpus under Article 11.072." But neither subsection (k), nor any other provision in Article 44.01, explicitly provides the State the right to appeal an order granting relief to an applicant for a writ of habeas corpus filed under article 11.09.
Garcia, 619 S.W.3d at 382–83.

[16] State's Brief at 19.

Legislature intended for the entire statutory scheme to be effective."[17] The State still has the right to appeal cases that fall under Subsection (a).[18]

2. However, the right to appeal under Subsection (a) is limited.

Article 44.01 of the Code of Criminal Procedure authorizes the State to make appeals in a number of circumstances. None of the listed circumstances permit the State to appeal orders granting habeas corpus relief under Article 11.09 of the Code.[19] The State recognizes this.[20] But notwithstanding this lack of explicit statutory authority, the State avers it may sometimes appeal trial court orders granting habeas corpus relief in misdemeanor cases. The State says:

> However, the fact that Article 44.01 does not explicitly list Article 11.09 does not preclude the State from appealing a trial court's Article 11.09 order because, even before Article 44.01 mentioned any habeas corpus order at all, this Court made clear that the State may appeal a trial court's order granting habeas corpus relief when the order functionally creates one of the applicable scenarios that Article 44.01 does enumerate.[21]

The State's position is absolutely correct.[22]

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17 *Yazdchi v. State*, 428 S.W.3d 831, 837 (Tex. Crim. App. 2014).

18 *Id.*

19 Article 11.09 deals with applicants for habeas corpus relief in misdemeanor cases. *See* Tex. Code Crim. Proc. art. 11.09.

20 State's at 16.

21 State's at 16-17 (internal footnote omitted).

22 The State cites two opinions of this Court as support. The first cited opinion is *Alvarez v. Eighth Court of Appeals of Texas,* 977 S.W.2d 590, 593 (Tex. Crim. App. 1998). The second cited opinion is *State v. Young,* 810 S.W.2d 221, 222-23 (Tex. Crim. App. 1991). Mr. Garcia takes no issue with the State's position concerning these opinions.

3. Is the trial court's order granting habeas-corpus relief equivalent to a court order the State is explicitly authorized to appeal under Article 44.01?

This is the ultimate question for this case: Is the trial court's order granting habeas corpus relief equivalent to a court order the State is explicitly authorized to appeal under Article 44.01? The State answers this question affirmatively and provides two separate reasons for its conclusion.

4. The State's rationales for the right to appeal in this case are conflicting.

First, the State argues that the trial court's order is tantamount to an order granting a new trial.[23] (The State, of course, may appeal an order granting a new trial.[24]) In taking this position, the State asserts that the trial court's order was not a dismissal of the charging instrument.[25]

Second, the State takes a diametrically opposed position and contends the trial court's order actually does serve to dismiss the charging instrument. The State declares:

> Consequently, even if this Court agrees with the Fourteenth Court of Appeals that the trial court's order granting Appellee's request for Article 11.09 habeas corpus relief and discharging Appellee constituted a dismissal of the information—or otherwise terminated the criminal proceedings against Appellee, regardless of the trial court's terminology—the State was nonetheless entitled to appeal that order pursuant to Article 44.01(a)(1).[26]

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[23] State's Brief at 23-28. The State says "the trial court's order was the functional equivalent to an order granting a new trial" and consequently is appealable. State's Brief at 27-28.

[24] *See* Tex. Code Crim. Proc. art. 44.01(a)(3).

[25] State's Brief at 15 ("the Fourteenth Court of Appeals erred in deeming the trial court's order to be a dismissal of the information").

[26] State's Brief at 29. Indeed, Article 44.01(a)(1) of the Code of Criminal Procedure allows the State to appeal an order that dismisses a charging instrument.

The State has identified two possible bases for claiming it is entitled to appeal the trial court's order in this case. The question for this Court is whether the court's order was the functional equivalent of an order: (1) granting a new trial; or (2) dismissing the information. If the answer to this question is yes, then the State has the right to appeal. If the answer to this question is no, then the State has no right to appeal. For reasons that will be explained below, the answer to the question is no.

5. The trial court's order was not the functional equivalent of the granting of a motion for new trial.

The trial court's order vacating the judgment and discharging Mr. Garcia is not functionally equivalent to an order granting a new trial. The reason there is no equivalence has everything to do with the language of the trial court's order. The court ordered two separate things. First, the court ordered that the judgment of conviction be vacated. Second, the court ordered that Mr. Garcia be "discharged." These are two separate things.

The first part of the order (vacating the judgment of conviction) is what happens when motions for new trial are granted. As explicitly stated in Texas Rule of Appellate Procedure 21.9(b), "[g]ranting a new trial restores the case to its position before the former trial."[27] "This means no finding of guilt and no sentence exist."[28]

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[27] *Accord State v. Bates,* 889 S.W.2d 306, 310 (Tex. Crim. App. 1994) (citing the language of the rule).

[28] *Ex parte Nickerson*, 893 S.W.2d 546, 548 (Tex. Crim. App. 1995).

But the second part of the order (discharging Mr. Garcia) is decidedly different than what happens when motions for new trial are granted. A discharge is the remedy called for under Article 11.40:

> The judge or court before whom a person is brought by writ of habeas corpus shall examine the writ and the papers attached to it; and if no legal cause be shown for the imprisonment or restraint, or if it appear that the imprisonment or restraint, though at first legal, cannot for any cause be lawfully prolonged, the applicant shall be discharged.[29]

What does it mean for an applicant for habeas corpus relief to be discharged? In other words, from what is the applicant to be discharged? The answer is that the applicant is to be discharged from confinement.[30] In this case, Mr. Garcia was considered to be confined because of his pending deportation.[31] So the trial court's order discharging Mr. Garcia meant he was no longer facing any collateral consequences from the conviction.

6. The trial court had authority to discharge Mr. Garcia.

The granting of a new trial does not necessarily result in the discharge of a defendant from confinement. As mentioned earlier, the granting of a motion for new

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[29] Tex. Code Crim. Proc. art. 11.40

[30] *See generally Ex parte Meyer,* 357 S.W.2d 754, 754 (Tex. Crim. App. 1962)(applicant prayed for discharge from confinement); *Ex parte Davis,* 344 S.W.2d 153, 154-55 (Tex. 1961) (applicant "not entitled to discharge in a habeas corpus proceeding unless the judgment ordering him confined is void"); *Ex parte Clubb,* 234 S.W.2d 874, 875-76 (Tex. Crim. App. 1950) (Court of Criminal Appeals found a criminal judgment against a defendant to be void and said "the effect of our decision is to order his release from confinement"). *See also Ex parte Reno,* 477 S.W.2d 292, 293 (Tex. Crim. App. 1972) (discussing an applicant's entitlement to be "discharged from confinement").

[31] *See Garcia,* 619 S.W.3d at 381.

trial simply "restores the case to its position before the former trial."[32] Many defendants are confined prior to their trials. The granting of a new trial will not release these defendants out of confinement. But an order discharging a defendant from confinement does precisely that. The trial court has absolute authority to grant a discharge; this Court has explained that an applicant is entitled to discharge in a habeas corpus proceeding if the judgment ordering him confined is void.[33] The trial court was not required to prepare findings and the determination of the discharge is dispositive for this case. It is axiomatic that when the trial court fails to file findings of fact, this Court will view the evidence in the light most favorable to the trial court's ruling and assume that the trial court made implicit findings of fact that support its ruling.[34] In summary, the trial court's order discharging Mr. Garcia was authorized and is not the functional equivalent of an order granting a new trial.

7. The trial court's order of discharge is allowed under the statute and inapposite from the State's authority.

The State avers that the discharge language actually means the Mr. Garcia is subject to a new trial.[35] The State relies upon *Ex parte Moody* and *Ex parte Wilson* to further explain that the granting of a writ is the functional equivalent of a motion for

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32 *See* Tex. R. App. P. 21.9(c).
33 *Ex parte Davis*, 161 Tex. 561, 562, 344 S.W.2d 153, 155 (1961).
34 *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000).
35 State's brief at 25-27.

new trial.[36] Neither case references discharge at all.[37] Neither case is a misdemeanor writ under Art. 11.09.[38] Without authority, the State offers that "it is clear that, by vacating Appellee's guilty plea and the court's judgment of conviction and sentence, the trial court merely released Appellee from the restraint of his conviction and put the parties back in the positions they were before Appellee pled guilty and was convicted by the trial court."[39] No such thing is evidence and it is certainly not "clear."

8. The trial court's order was not the functional equivalent of the granting of a motion in arrest of judgment or a dismissal of the charging instrument.

We turn now to the State's alternative contention that the trial court's order of discharge is functionally equivalent to a dismissal of the charging instrument. This contention is unavailing. Nothing was alleged to be wrong with the information in this case. The problem concerned the involuntary nature of Mr. Garcia's plea to the charges contained in that information. If the trial court had meant to dismiss the information, the court could have easily said so. For example, in *State v. Santillana,*[40] the First Court

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[36] State's brief at 26-27. *Ex parte Moody*, 991 S.W.2d 856, 859 (Tex. Crim. App. 1999) and *Ex parte Wilson*, 724 S.W.2d 72, 74-75 (Tex. Crim. App. 1987).

[37] See *Ex parte Moody* and *Ex parte Wilson*, *supra* where "discharge" is nowhere in either opinion.

[38] Both cases are filed as Art. 11.07 writs. *See Ex parte Moody*, 991 S.W.2d at 857, and *Ex parte Wilson*, 724 S.W.2d at 73.

[39] State's brief at 27.

[40] *State v. Santillana,* 612 S.W.3d 582 (Tex. App.—Houston 2020, pet. ref'd).

of Appeals considered an order by the same trial judge as in the current case.[41] The judge order said:

> the motions to set aside the information are granted on the ground they are not based on a valid complaint and so the informations are ordered set aside in those cases."[42]

Nothing in the trial court's order in the current case ordered that the charging instrument be set aside. There was nothing wrong with the information. There was no reason for the information to be set aside. The trial court's order discharging Mr. Garcia did not dismiss the information. Thus, the trial court's order is not equivalent to the dismissal of a charging instrument. Accordingly, the State is not authorized to appeal the trial court's granting of relief on habeas corpus under Article 44.01(a)(1).

[41] The trial judge is The Honorable Franklin Bynum of Harris County Criminal Court at Law No. 8.

[42] *State v. Santillana,* 612 S.W.3d at 583.

PRAYER

Mr. Garcia prays that this court affirm the decision of the Court of Appeals and hold that the State had no jurisdiction to appeal this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Tex. R. App. Proc. 9.5, this certifies that on July 30, 2020, a copy of the foregoing was emailed to counsel for the state (through texfile.com) at the following address:

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